



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0914]

RIN 1625-AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to extend the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX.

This action is necessary to provide protection to the levee protection wall located at the north end of the turning basin until permanent repairs can be effected. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0914 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, email scott.k.whalen@uscg.mil

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port, Marine Safety Unit Port Arthur
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX.¹ That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts.

On April 16, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (83 FR 16267). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this temporary safety zone. During the comment period that ended on June 15, 2018, we received one comment.

On July 18, 2018, the Coast Guard published the temporary final rule establishing the safety zone until January 31, 2023 (83 FR 33842).

In August 2022, the U.S. Army Corps of Engineers (USACE) informed the Coast Guard that permanent repairs to the flood protection wall would not be completed for

¹ See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG-2017-0797 (83 FR 4843).

another two years. Therefore, the Coast Guard proposes to extend the effective period of the temporary safety zone through January 31, 2025.

Damage to the temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Captain of the Port Marine Safety Unit Port Arthur (COTP) is proposing to extend the effective period of the temporary safety zone for navigable waters of Taylor Bayou for two additional years until January 31, 2025. There are no other changes to the regulatory text of this rule cited in 33 CFR T08-0914. This rule would continue to prohibit all persons and vessel from entering the safety zone unless authorized by the COTP or a designated representative.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and entities impacted by the safety zone. This safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29° 50'57.45N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER

INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in

such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves extending the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include

the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2017-0194 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. In § 165.T08-0914 revise paragraph (d) to read as follows:

§ 165.T08-0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

* * * * *

(d) *Enforcement date.* This safety zone is in effect from February 1, 2022 through January 31, 2025. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: September 28, 2022

Molly A. Wike,
Captain, U.S. Coast Guard,
Captain of the Port, Marine Safety Unit Port Arthur.

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